IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 08.12.2010

C.R.No.4365 of 2003

The Daryapur L & C Society Limited, Daryapur ...Petitioners

Versus

The State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

Present : Mr. Anil Ghanghas, Advocate, for the petitioner.

Mr. Anoop Sharma, AAG, Haryana, for the respondents.

HEMANT GUPTA, J. (Oral)

The petitioner is aggrieved against an order passed by the learned trial Court on 05.08.1999, whereby the objections filed by the petitioner to the Award dated 20.01.1995 to be made as a Rule of the Court, was dismissed and the order passed by the learned first Appellate Court on 08.04.2003, whereby the appeal against the said order was also dismissed.

The petitioner was granted a contract for construction of Sub Health Centre at Village Dhani Bhakran vide agreement No.41 of 1989-90. The disputes arising out of the parties in terms of the aforesaid agreement were referred to an Arbitrator vide communication dated 17.05.1994 by Engineer-in-Chief, PWD B&R Branch, Chandigarh. The Arbitrator has given his Award on 20.01.1995 awarding a sum of Rs.1,33,654/- to the respondent. The petitioner had not participated in the arbitration proceedings.

In an application for making such Award as Rule of the Court, the petitioner submitted his objections dated 20.11.1996, inter alia, pointing

out that the Award is an ex parte Award without providing an opportunity of hearing to the petitioner and that the Award is time barred. It is pleaded that the Society was given six months time to complete the work i.e. 23.03.1990, but without demarcation and without delivery of stocks, the petitioner could not be expected to execute the work and, therefore, it cannot be said that it was the petitioner, who was responsible for non-completion of the contract and consequently the Department was not competent to grant the contract at the risk and costs of the petitioner to any other contractor.

Both the Courts below have dismissed the objections filed by the petitioner. It has been, inter alia, found that the Arbitrator has issued several notices to the Society and that on 06.09.1994, Subhash Chander, President of the Society appeared before the Arbitrator and raised no objection for extension of time for a period of four months. Therefore, the Courts have not found any merit in the argument that opportunity of hearing was not provided to the petitioner.

I have examined the arbitration record carefully. It shows that notices were issued under registered cover to the petitioner on 23.05.1994, 23.08.1994, 07.09.1994, 22.11.1994, 20.12.1994 and 09.01.1995. It was, thereafter, on 17.01.1995 evidence was recorded by the Arbitrator and Award announced. The Award dated 20.01.1995 was also communicated to the petitioner through registered letter dated 25.01.1995. The record further shows that three registered envelopes have been returned and are part of the arbitration record i.e. registered envelopes sent on 20.12.1994, 10.01.1995 & 25.01.1995. The other notices have not been received back. The address of the petitioner mentioned on such notices as well as on the notices which have not been returned back is the same i.e. The Daryapur Co-op. L & C Society Ltd., Daryapur, Tehsil Siwani, District Hissar. The endorsement of

the postal employee is that the representatives of the Society have not met. Since only three registered envelopes are on record, though the others are also purportedly sent, therefore, the presumption that the other have been received. Still further, the aforesaid envelopes, which have been returned back, bear the correct address of the petitioner. Therefore, in terms of Section 27 of the General Clauses Act, there is a presumption of due service upon the petitioner.

In view of the above, I do not find any merit in the argument raised by the learned counsel for the petitioner that the Arbitrator has announced its Award without providing any opportunity of hearing to the petitioner.

The argument raised by the learned counsel for the petitioner that the arbitration claim was barred by time is again not tenable. Clause 25-A of the agreement contemplates that Engineer-in-Chief, Haryana PWD B&R, may appoint an Arbitrator on written request from the Contractor or Executive Engineer within one hundred and eighty days or six months from the payment of final bill to the contractor or from the date registered notice is sent to the contractor. Clause 25-A of the agreement reads as under:

> "Clause 25-A. - If any question, different or objection whatsoever shall arise in any way connected with or arising out of this instrument or the meaning or operation of any part thereof, or the rights, duties or liabilities of either party, the same insofar as the decision of and such matter is herein before provided for and has been so decided, every such matter including whether its decision has been otherwise provided for and or whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as the result of such termination shall be referred for arbitration to the arbitrator to be appointed by the Engineer-in-

> Chief, Haryana PWD B&R from written request from the contractor or Executive Engineer within one hundred and eighty days or six months from the payment of final bill to the contractor or from the date registered notice is sent to the contractor and his decision shall be final and binding and where the matter involves a claim for or the payment of recovery or deduction of money, only the amount, if any awarded in such arbitration shall be recoverable in respect of the matter so referred. The arbitrator so appointed shall not be less than the rank of Superintending Engineer."

Since the petitioner failed to complete the contract, the Department has engaged another contractor to complete the work at the risk and costs of the petitioner. Therefore, period of 180 days has to be calculated from the date the payment was made to the aforesaid contractor, who has performed the contract at the risk and costs of the petitioner.

In view of the above, I do not find any patent illegality or irregularity in the order passed by the Courts below, which may warrant any interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

08.12.2010 (HEMANT GUPTA)
Vimal JUDGE